

**Questions for the Record Submitted to  
Assistant Secretary Ellen Sauerbrey  
Chairman Christopher H. Smith (#1)  
Subcommittee on Africa, Global Human Rights  
And International Operations  
House International Relations Committee  
May 10, 2006**

**Question:**

**Material Support Bar and the Refugee Program**

- a) Can you give us the numbers and nationalities of refugees who have been placed on hold because of “material support” (under section 212(a)(3)(B) of the Immigration and Nationality Act) considerations?
- b) Can you give us the numbers and nationalities of refugees placed on hold because of “membership” in non-designated terrorist organizations?
- c) Can you estimate the numbers and nationalities of other refugees who may be affected by these two provisions?
- d) Can you explain the process by which the Administration plans to grant waivers of “material support” ground for inadmissibility?
- e) Is there a policy on the application of the material support bar to aliens whose support to “terrorist organizations” was done involuntarily or under duress?
- f) Is there a process or policy to identify armed resistance groups as not being terrorist groups in appropriate cases?

**Answer:**

- a) The Department of State does not keep statistics regarding specific determinations made by DHS/U.S. Citizenship and Immigration Service officers. We would refer you to DHS for a response.

- b) The Department of State does not keep statistics regarding specific determinations made by DHS/U.S. Citizenship and Immigration Service officers. We would refer you to DHS for a response.
- c) Some 12,000 individuals we had planned to admit in FY 2006 have been held up or deemed inadmissible for reasons relating to material support to or membership in groups deemed to be terrorist organizations under Section 212 of the Immigration and Nationality Act. For example, far fewer applicants stepped forward to U.S. refugee processing in the Tham Hin camp in Thailand than had been anticipated. We believe that concerns about the material support issue were involved in the refugees' decisions. Chin refugees in Malaysia, Columbians in Ecuador, Cuban "Alzadar" in Cuba and other groups were also kept out of the United States.
- d) Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), the Secretary of Homeland Security or the Secretary of State, in consultation with each other and with the Attorney General, is empowered to make an unreviewable discretionary determination that the terrorism inadmissibility provision does not apply with respect to material support an alien has afforded to an organization or individual that has engaged in terrorist activity.

After extensive consultations among Departments of Homeland Security, State and Justice, the Secretary of State recently exercised her discretionary authority twice to not apply the material support inadmissibility provision to certain Burmese Karen refugees in Thailand who otherwise would have been admissible, except that they provided material support to the Karen National Union (KNU) and possibly its armed wing, the Karen National Liberation Army (KNLA). The decisions to exercise the material support inapplicability provision were based on the Secretary of State's assessment that this exercise of discretion serves the foreign policy interests of the United States and the collective inter-agency assessment that the admission of these refugees will not compromise our national security.

The Secretary of State's determination was subject to certain conditions that have to be applied on an individual basis. The decision as to whether an individual refugee applicant meets the factual criteria established by the Secretary of State in her exercise of this discretionary authority requires fact finding by a DHS refugee adjudicator, who determines, among other things, whether the applicant is credible and otherwise eligible for resettlement (but for the material support inadmissibility ground) and that all

requisite identity and security checks have been conducted and allow for the individual to be resettled.

Like the decisions with respect to the Burmese Karen refugees in Thailand, the decision whether to exercise this unreviewable discretionary authority with respect to applicants in any other groups of refugees that may be deemed appropriate will be made on a case-by-case basis after the completion of consultations among the Departments of State, Homeland Security and Justice that are informed by detailed assessments of the risks to our foreign policy and national security interests and counter-terrorism strategy. These inter-agency consultations seek to ensure that important national security interests and counter-terrorism efforts are harmonized with our foreign policy interests and our Nation's historic role as the world's leader in refugee resettlement.

e) Under Section 212(a)(3)(B)(iv)(VI) of the INA, aliens who provide material support to individuals or organizations that engage in terrorist activity are inadmissible to the United States. The INA provides no exception for material support provided involuntarily or under duress.

f) Under Section 212(a)(3) of the INA, terrorist activity is defined to include, among other things, any use of explosives, firearms, or other weapons or dangerous device with intent to endanger the safety of

individuals or to cause substantial damage to property, except when done for personal monetary gain. The definition of terrorist organization refers not only to organized groups officially designated as such by the U.S.

Government, but also to a group of two or more individuals engaged in, or who have a subgroup engaged in, terrorist activity. The law provides no exception for motivation (other than for acts done for personal monetary gain). The Board of Immigration Appeals recently issued Matter of S-K-, 23 I&N Dec. 936 (BIA 2006), in which the Board rejected the respondent's argument that the terrorism bar implicitly includes an exception for cases involving the use of justifiable force to repel attacks by forces of an illegitimate regime, recognizing that "Congress intentionally drafted the terrorist bars to relief very broadly, to include even those people described as 'freedom fighters,' and it did not intend to give [the Board] discretion to create exceptions for members of organizations to which our government might be sympathetic."

There is no policy in place regarding the use of any relevant discretionary authority to alter this outcome for armed resistance groups, but any such authority would only be exercised on a case-by-case basis after the completion of consultations among the Departments of State, Homeland Security, and Justice that are informed by detailed assessments of our

foreign policy interests together with the risks to our national security  
interests and counter-terrorism strategy.

**for the Record Submitted to  
Assistant Secretary Ellen Sauerbrey  
Chairman Christopher H. Smith (#2)  
Subcommittee on Africa, Global Human Rights  
and International Operations  
House International Relations Committee  
May 10, 2006**

**Question:**

Can you please provide a copy of any Self-Instruction Guide (SIG), course outlines, and any and all other training materials which are currently being used to address the requirements of section 602 of IRFA since its enactment?

**Answer:**

Copies of requested self-instruction materials used in training conducted by the Foreign Service Institute are attached:

1. Small Posts With Significant Visas handout
2. Four PowerPoint slides (part of the Immigrant Visa module of the Basic Consular Course);
3. Self-Instructional Guide (SIG) material (references to V92/93 excerpted from the Immigrant Visa SIG);

FSI is updating the Management module of the Basic Consular Course and will be happy to provide a copy of the updated materials when they have been completed.

Small Posts with Significant Visas 92/93 workload

Abidjan	Djibouti
Addis Ababa	Kampala
Ankara	Kigali
Bamako	Monrovia
Banjul	Rangoon
Cotonou	Sarajevo
Conakry	Yaounde
Dakar	

The processing of I-730's petitions for the following-to-join spouse and/or children of refugees and asylees is an important service commonly performed by consular officers. While most posts see only a few I-730 cases (commonly referred to as "Visa 92/93 cases"), there are a handful of posts that have a significant Visa 92/93's workload. If you are a junior officer going to one of the above posts, you will be responsible for processing 92/93 cases. As asylee follow-to-join cases (Visa 92's) and refugee follow-to-join cases (Visa 93's) processing requirements differ from those of immigrant visas (and even from each other), it is in your best interest to schedule consultations with PRM/A, the office in the State Department that handles refugee admissions.

Delicia Spruell, telephone (202) 663-1006, is the Visas 92/93 contact in PRM/A and welcomes consultations with outgoing officers on I-730 processing. CA/VO/F/P also has a Visas 92 contact - currently Jill Nystrom (202) 663-1164. Please contact them to set up consultations soon after completion of the IV segment of your training.



# Refugees



# Refugees

*70,000 immigrants per year may enter the US as refugees.*

**DOS's Bureau of Population, Refugees and Migration (PRM) administers the U.S. refugee program in conjunction with DHS.**

- PRM - sets regional numerical ceilings and identifies particular at-risk populations. Works with NGOs and resettlement agencies.
- DHS - Determines refugees' eligibility and admissibility to U.S.

**“Walk-ins” should be handled in accordance with DOS's annual cable.**

# Refugees

*Refugees may approach the consular section for assistance with documents; consular officers also assist with derivatives.*

- **Refugee travel documents** are issued by DHS; inquiries at posts should be referred to the DHS district office having jurisdiction (see 2006 State 079839 for description of travel document).

- **VISAS 92 and 93:**

A case in which an alien granted refugee or asylum status files a petition (I-730) on behalf of his/her spouse and/or children (**05 State 063110 clearly explains limits of Conoff's role in process.**)

# Asylees

*Asylum is granted only to aliens physically present in the United States (or territorial waters).*

- DHS officers review claims and decide to grant asylum or to refer the seeker's case to an immigration judge.
- Conoffs do not become involved.

## **Material on V92/93 from Immigrant Visa Self-Instructional Guide**

**From Section 1 (Introduction to Immigrant Visas):** “Bringing in a diverse pool of immigrants and providing humanitarian assistance to refugees are also important objectives of U.S. immigration policy.”

**From Basic Reference Materials (9 FAM):** “[Appendix O](#) describes refugee case processing – it is currently being updated.”

### **From the Glossary:**

<b>DHS</b>	<p>The <u>Department of Homeland Security</u> incorporates the former Immigration and Naturalization Service (INS) and many other agencies. DHS is responsible for</p> <ul style="list-style-type: none"><li>• aliens physically present in the United States,</li><li>• the adjudication of immigrant visa petitions,</li><li>• refugee processing and asylum claims, and</li><li>• the approval or denial of waivers of ineligibility.</li></ul>
<b>Refugee</b>	<p>A refugee is someone who is outside his country of nationality or habitual residence, who is unable or unwilling to return to that country because of a well-founded fear of persecution.</p>

**Questions for the Record Submitted to  
Assistant Secretary Ellen Sauerbrey  
Chairman Christopher H. Smith (#3)  
Subcommittee on Africa, Global Human Rights  
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House International Relations Committee  
May 10, 2006**

**Question:**

**Refugee Program Reforms under Section 602 of IFRA**

Can you describe the steps taken by the Department to ensure that case files prepared by overseas processing entities (OPEs) accurately reflect information provided by refugee applicants, and that genuine refugee applicants are not disadvantaged or denied refugee status due to faulty case file preparation?

**Answer:**

The Department of State has agreements with four NGOs and the International Organization for Migration to operate the various OPEs which process U.S. Refugee Admissions Program cases. These organizations all have extensive experience and expertise in refugee case file preparation. In addition, State has developed and implemented within the last few years a database and case file management system (the Worldwide Refugee Admissions Processing System, or WRAPS) at all OPEs, which ensures standardized and complete case preparation. State's Bureau of Population, Refugees, and Migration, Office of Refugee Admissions (PRM/A) has a

team of Program Officers in Washington and Refugee Coordinators posted at key locations around the world who monitor OPE performance continuously and communicate with OPE personnel on a regular basis. PRM/A also convenes annual OPE and Refugee Coordinator Workshops to enhance performance of processing partners and address emerging issues. Based on the long association with these processing partners and the ability to monitor their performance and communicate closely with them as described above, the Department of State is fully confident that refugee cases are prepared accurately and correctly.

**Questions for the Record Submitted to  
Assistant Secretary Ellen Sauerbrey  
Chairman Christopher H. Smith (#4)  
Subcommittee on Africa, Global Human Rights  
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**Question:**

**IRFA Section 602 on Hostile Biases in the Refugee Program**

Can you submit a copy of any guidelines currently being used to ensure against hostile biases in the refugee and asylum programs and a description of their implementation?

**Answer:**

We would refer you to DHS for a response regarding the guidelines and procedures that they have implemented to ensure against hostile biases in the refugee and asylum process.



**Questions for the Record Submitted to  
Assistant Secretary Ellen Sauerbrey  
Chairman Christopher H. Smith (#5)  
Subcommittee on Africa, Global Human Rights  
and International Operations  
House International Relations Committee  
May 10, 2006**

**Question:**

Have any procedures been put in place by State to implement Section 604 of IRFA? Have lookouts or watch lists for such violators been developed? How many individuals have been denied visas under Section 604 of IRFA since its enactment in 1998?

**Answer:**

There are guidelines to the field on how to implement this provision in 9 FAM 40.26. Persons determined to be subject to this provision will be subject to visa ineligibility pursuant to section 212(a)(2)(G) of the Immigration and Nationality Act, 8 USC 1182(a)(2)(E). Visa ineligibility determinations can only be made by consular officers in the context of adjudicating visa applications. While other agencies can provide State with names of potentially ineligible applicants, lookout or watchlist entries would normally come from consular officers based on visa determination. 212(a)(2)(G) determinations are problematic, since only foreign government officials are subject to this provision and until recently this only applied to acts within the past 24 months. Because current government officials

coming to the United States on behalf of their governments are exempted from this provision by INA 102, there were few cases in which this provision would apply. One person was formally denied a visa under INA 212 (a)(2)(G), in 2005.